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06 UNITED STATES DISTRICT COURT
07 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

08 CHRISTOPHER DENIS WHITE,) CASE NO. C05-1794-JCC-MAT
09)
09 Petitioner,)
10)
10 v.) REPORT AND RECOMMENDATION
11)
11 ROBIN ARNOLD-WILLIAMS, et al.,)
12)
12 Respondents.)
13 _____)

14 This is a federal habeas action brought pursuant to 28 U.S.C. § 2254. Petitioner is
15 currently confined at the Western State Hospital (“WSH”) pursuant to a July 1, 2005, order of the
16 King County Superior Court revoking petitioner’s less restrictive treatment. The Superior Court,
17 after finding that petitioner had violated the terms and conditions of a previous order and judgment
18 for less restrictive treatment, remanded petitioner for a period of intensive treatment not to exceed
19 180 days from June 27, 2005.

20 Petitioner submitted his federal habeas petition to this Court for review on October 25,
21 2005. He asserts in his petition that his less restrictive treatment was improperly revoked. He also
22 asserts that he has been assaulted by staff at WSH. Petitioner concedes that he has not appealed

01 the order revoking his less restrictive treatment, but asserts that his lawyer would not allow him
02 to do so. As to his claims regarding assaults by WSH staff, petitioner asserts that he has filed
03 complaints with the hospital but that nothing has been done.

04 To the extent petitioner challenges the order revoking his less restrictive treatment,
05 petitioner's claims are not yet eligible for federal habeas review. State remedies must first be
06 exhausted on all issues raised in a federal habeas corpus petition. *Rose v. Lundy*, 455 U.S. 509
07 (1982); 28 U.S.C. §2254(b), (c). The exhaustion requirement is not deemed satisfied until
08 petitioner demonstrates that each of his federal claims has been presented to the state's highest
09 court or that no state remedy is now available. *Batchelor v. Cupp*, 693 F.2d 859, 863 (9th Cir.
10 1982), *cert. denied*, 463 U.S. 1212 (1983). The exhaustion requirement is a matter of comity,
11 intended to afford the state courts "the first opportunity to remedy a constitutional violation."
12 *Sweet v. Cupp*, 640 F.2d 233, 236 (9th Cir. 1981). Petitioner makes clear that he has never
13 presented any of his federal habeas claims to the state courts for review. Petitioner's federal
14 habeas claims are therefore unexhausted.

15 To the extent petitioner challenges the conduct of staff at WSH, his claims are not
16 cognizable in a federal habeas action. Petitioner may, if he chooses, pursue any constitutional
17 challenges to the conditions of his confinement at WSH in a separate civil rights action brought
18 under 42 U.S.C. § 1983.

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01 For the foregoing reasons, this Court recommends that petitioner's federal habeas petition
02 and this action be dismissed without prejudice. A proposed order accompanies this Report and
03 Recommendation.

04 DATED this 3rd day of November, 2005.

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06 Mary Alice Theiler
07 United States Magistrate Judge
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